REMARKS/ARGUMENTS

Introductory Remarks

Claims 1-17 are pending in the application. Claims 1, 2, 6 and 13 have been amended. Claims 18-20 are presented new and are supported by the specification and original claims 2, 6, 7 and 12. These amendments and new claims do not introduce new matter. The equations in the specification at paragraph 0053 and in claim 2 have been amended for consistency in the representation of the variable for satisfaction notes as defined in paragraph 0049. Claims 6 and 13 are amended for consistency in regard to the recitation of the "smell" print, and are not being amended for a reason relating to patentability.

Claim Objections

The Office Action sets forth several objections of various claims to which the assignee responds as follows:

1. Claims 2, 5, and 7 are objected to because they are dependent upon a rejected base claim. The independent claims on which claims 2, 5, and 7 depend, have been argued as being patentable in the below remarks. Therefore, at least for those reasons, claims 2, 5, and 7 are allowable.

Claim Rejections - 35 U.S.C. §101

The Office Action sets forth a rejection of claims 1-11 as being directed to non-patentable subject matter as (a) being drawn to a method that "may be performed within the human mind," and (b) lacking a tangible result.

With regard to the first basis (a) for the rejection, claim 1 has been amended to recite another statutory class of subject matter, such as a particular apparatus. This amendment is supported at page 11 of the specification. Accordingly, the claim amendment overcomes the rejection, which should be withdrawn.

With regard to the second basis (b) for the rejection, the law does not require a claim to recite a "tangible result." The Federal Circuit in the recent decision, *In re Bilski*, has stated that the two prong "machine-or-transformation test," as was recited in the office action for the first basis (a) for the rejection, "is the only applicable test

and must be applied." *In re Bilski*, Appeal No. 2007-1130, p. 29, (Fed. Cir., Oct. 30, 2008) (underline added). The Federal Circuit further stated that to "the extent that some of the reasoning in these decisions [e.g. *State Street Bank*] relied on considerations or tests, such as 'useful, concrete and <u>tangible result</u>,' that are no longer valid as explained above, those aspects of the decisions should no longer be relied on." *Id.*, at 23. Therefore, the second basis for this rejection cannot stand and should be withdrawn.

Claim Rejections - 35 U.S.C. §103 (a)

The Office Action maintains the prior rejections of various claims as being obvious under 35 U.S.C. §103(a) as follows:

1. Claims 1, 3, 6, 8-15, and 17 are rejected as being unpatentable over Juergens (US Patent 5,200,909) in view of Hillier et al (Introduction to Operations Research, published 01/1995).

2. Claim 4 is rejected as being unpatentable over Juergens (US Patent 5,200,909) in view of Hillier et al (Introduction to Operations Research, published 01/1995) as applied to claim 1 and further in view of Glaser et al (US Patent 7,003,515).

3. Claim 16 is rejected as being unpatentable over Juergens (US Patent 5,200,909) in view of Hillier et al (Introduction to Operations Research, published 01/1995) as applied to claim 12 and further in view of Yamafuji et al (US Patent 5,302,262).

Applicant respectfully disagrees with these rejections, because the Office has failed to establish a *prima facie* case of obviousness for any one of claims 1, 3-4, 6, and 8-17.

Claims 1-11 and 17:

As to claim 1, Examiner states that the "automatically calculating" step of claim 1 is taught by Juergens. The Applicant respectfully disagrees.

Juergens does not disclose the step of claim 1 of "automatically calculating weighting coefficients constituting said profile and respectively affected to said sensors measurements, *by successive approximation* of sets of weighting

coefficients leading to *minimizing the sum of quadratic errors* over the set of satisfaction notes". The passages of Juergens, col. 11 lines 44-68 and col. 12, lines 1-5, which are cited in the office action, relate to developing a score for a particular wine based on user preferences. Neither these passages nor Juergens as a whole disclose automatically determining weighting coefficients in the manner recited by claim 1 - "by successive approximation." In particular, formula (9) in column 11, the coefficient value (Cx) is a "scale weight for the body, tannin, acidity and sweetness characteristics of the wine based upon color of the wine." However, these values are fixed in a table in FIG. 11 having been **pre-determined** "based on wine literature and studies done by the applicant" (col. 11, line 68 – col. 12, line 10). Thus, unlike claim 1 of the present application, the weighting coefficient (Cx) values of Juergens are not determined automatically *by successive approximation*, are not determined by and do not constitute the user profile.

The office action correctly states that Juergens fails to teach successive approximation of sets of weighting coefficients leading to minimizing the sum of the quadratic errors over the set of satisfaction notes. The office action relies on Hillier for the teaching of "minimizing the sum of the quadratic errors over the set of satisfaction notes (pgs 500-502, 588-590 and 820-826)". Hillier at pp. 820-826, which pages were not cited in the prior office action, does disclose formulas for minimizing a sum of the quadratic errors. However, Hillier does not disclose determining these errors "over the set of satisfaction notes". In Hillier there is no discussion about how to apply this formula to a set of coefficients as in Juergens. And in Juergens there is no discussion about how to determine the coefficient values (Cx) in any other manner such as minimizing the sum of the quadratic errors. Indeed, even in view of the combination of the references, there is no indication, or even a hint, as to what errors there are in Juergens in connection with the pre-determined coefficient values or in connection with the satisfaction notes to which the equations of Hillier should be applied, or how it could be applied. Therefore, Juergens and Hillier taken alone or in combination, fail to teach or suggest all the limitations of claim 1 of the present invention.

Claims 2-11 and 17 depend from claim 1, which is patentable for the reasons noted above.

Claims 12-16:

Regarding claim 12, the office action states that the "calculator" element of the system of claim 12 are taught by Juergens in view of Hilliers. The Applicant respectfully disagrees.

Similar to the remarks above in connection with claim 1, Juergens does not disclose "a calculator for determining weighting coefficients constituting said profile and respectively affected to said sensors, *by successive approximation* of sets of weighting coefficients". The passages of Juergens, col. 11 lines 44-68 and col. 12, lines 1-5, which are cited in the office action, relate to developing a score for a particular wine based on user preferences. Neither these passages nor Juergens as a whole disclose automatically determining weighting coefficients in the manner recited by claim 12 - "by successive approximation." In particular, formula (9) in column 11, the coefficient value (Cx) is a "scale weight for the body, tannin, acidity and sweetness characteristics of the wine based upon color of the wine." However, these values are fixed in a table in FIG. 11 having been **pre-determined** "based on wine literature and studies done by the applicant" (col. 11, line 68 – col. 12, line 10). Thus, unlike claim 1 of the present application, the weighting coefficient (Cx) values of Juergens are not determined automatically *by successive approximation*, are not determined by and do not constitute the user profile.

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even a hint, as to what errors there are in Juergens in connection with the pre-determined coefficient values or in connection with the satisfaction notes to which the equations of Hillier should be applied, or how it could be applied. Therefore, Juergens and Hillier taken alone or in combination, fail to teach or suggest all the limitations of claim 1 of the present invention.

For at least the reasons indicated above, the Office has failed to establish a *prima facie* case of obviousness for any of claims 1 or 12. Claims 2-11 and 17 depend from claim 1 and claims 13-16 depend from claim 12 and therefore include all limitations of the respective independent claims. Accordingly, Applicant requests this rejection be withdrawn.
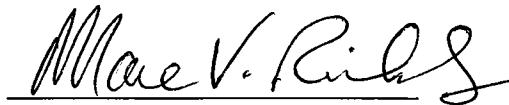
New Claims 18-20:

New claims 18-20 incorporate elements of claims 2, 5, 6, 7 and 12. As claims 2, 5 and 7 were previously indicated as containing allowable subject matter, applicants request an indication that claims 18 and 20 are also allowable. Claim 19 is allowable for the reasons stated above with regard to claim 12.

CONCLUSION

The claims at issue distinguish over the cited references and are in condition for allowance. Accordingly, such allowance is now earnestly requested. The undersigned attorney for Assignee requests an Interview via telephone with the Examiner to expedite allowance of these claims.

Respectfully submitted,

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